

In the United States Court of Federal Claims

No. 21-955C

(Filed: January 5, 2022)

NOT FOR PUBLICATION

CONSUELO E. KELLY-LEPPERT,

Pro Se Plaintiff,

v.

THE UNITED STATES,

Defendant.

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RCFC 60(b); Reconsideration

ORDER DENYING SECOND MOTION FOR RECONSIDERATION

In this case, pro se plaintiff Consuelo E. Kelly-Leppert alleged that the government failed to provide her deceased husband and business partner, a Vietnam veteran, with a comprehensive health exam regarding exposure to Agent Orange, an herbicide agent used in the Vietnam War. *Kelly-Leppert v. United States*, No. 21-955C, 2021 WL 2853171, at *1 (Fed. Cl. July 8, 2021). Ms. Kelly-Leppert asserted contract-based claims, malpractice tort claims, veterans benefit claims, constitutional claims based on the Fourteenth Amendment, and civil rights claims. *Id.* She sought \$138 million in damages for breach of contract, the loss of her business partner, loss of consortium, pain and suffering, and damages to her business. *Id.*

On July 8, 2021, the court granted the government's motion dismiss these claims for lack of subject matter jurisdiction. *Id.* On August 5, 2021, Ms. Kelly-Leppert filed a motion for reconsideration under Rule 59 of the Rules of the United States Court of Federal Claims (RCFC). *Kelly-Leppert v. United States*, No. 21-955C, 2021 WL 5858600, at *1 (Fed. Cl. Dec. 10, 2021). In briefing on this motion for reconsideration, Ms. Kelly-Leppert asserted additional constitutional claims under the Fifth Amendment. *Id.* at *2. On December 10, 2021, this court denied Ms. Kelly-Leppert's motion for reconsideration and the request for transfer to district court contained in the motion. *Id.* at *5.

Now pending before the court is Ms. Kelly-Leppert's second motion for reconsideration, which the court construes as a motion under RCFC 60(b) for relief from the court's July 8, 2021 judgment and its December 10, 2021 order denying her first motion for reconsideration. *See* 2d Mot. at 2-3, ECF No. 26. As relevant here, the court may grant relief from a final judgment or order under RCFC 60(b) due to "mistake" or for "any other reason that justifies relief." RCFC 60(b)(1), (6). "Mistake" under RCFC 60(b)(1) includes "judicial error." *Patton v. Sec'y of Health & Human Servs.*, 25 F.3d 1021, 1030 (Fed. Cir. 1994). An RCFC 60(b) motion "is not available simply to relitigate a case—it is an avenue to secure extraordinary relief . . . which may be granted only in exceptional circumstances." *Wagstaff v. United States*, 595 F. App'x 975, 978 (Fed. Cir. 2014) (quotation omitted).

No such "exceptional circumstances" exist here. *Id.* In support of her second motion for reconsideration, Ms. Kelly-Leppert argues that the court "missed" or "ignored" her constitutional claims based on the Fourteenth and Fifth Amendments. 2d Mot. at 3. However, the court addressed Ms. Kelly-Leppert's constitutional claims both in its July 8, 2021 dismissal order, *Kelly-Leppert*, 2021 WL 2853171, at *6 (addressing Fourteenth Amendment claims), and in its December 10, 2021 order denying her first motion for reconsideration, *Kelly-Leppert*, 2021 WL 5858600, at *3-4 (addressing Fourteenth Amendment and Fifth Amendment claims). As explained in those decisions, this court lacks jurisdiction over Ms. Kelly-Leppert's constitutional claims or they otherwise do not provide grounds for reconsideration. *Kelly-Leppert*, 2021 WL 2853171, at *6; *Kelly-Leppert*, 2021 WL 5858600, at *3-4. Ms. Kelly-Leppert has therefore failed to show that she is entitled to "extraordinary relief" under RCFC 60(b), *Wagstaff*, 595 F. App'x at 978, and her second motion for reconsideration is **DENIED**.

IT IS SO ORDERED.

s/ *Nancy B. Firestone*
NANCY B. FIRESTONE
Senior Judge